LOH CHENG HYE

v.

MENTERI DALAM NEGERI, MALAYSIA & ANOR.

HIGH COURT MALAYA, PENANG
EDGAR JOSEPH JR J
[CRIMINAL APPLICATION NO. 44-13-91]
3 MAY 1991

CRIMINAL PROCEDURE: *Compliance - Report of detention to be made to Minister - Within designated time - 'Forthwith' - Interpretation of - National Language Act, s. 6 - Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 33(1), (2)(c), 6(1).*

The applicant was detained under a detention order issued pursuant to s. 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 (the Act).

L's Counsel argued that although an officer of or above the rank of Deputy Superintendent had reported the circumstances of the arrest and detention to a police officer designated by the IGP within the 14 day period in s. 3(2)(c), the latter did not make his own report to the Minister until 4 days later. It was contended that this was too late because the time limited by the subsection for the doing of this act was "forthwith". There was no explanation for this delay.

Held:

[1] Once the 14 day period of detention based upon the authority of a police officer of or above the rank of Deputy Superintendent of Police expires, without there having been compliance with the second limb of proviso (c) to s. 3(2) of the Act, the detainee's continued detention thereafter would be illegal and so no report made by the designated officer, however soon after the expiry of the 14 day period of detention, could cure the illegality.

[2] So long as the two reports within the meaning of proviso (c) to s. 3(2) of the Act are made within the 14 day period of the detainee's detention, there is sufficient legal backing for the detainee's continued detention pending enquiries for a maximum permissible period of up to 60 days from date of his arrest but no more.

[L's application dismissed.]

Case referred to:
Gopal Mandal v. The State of West Bengal [1975] AIR SC 1807

Legislation referred to:
Dangerous Drugs (Special Preventive Measurers) Act 1985, ss. 3(1), (2), 6(1)
Interpretation Act 1967, s. 54
Maintenance of Internal Security Act [Ind] s. 3(1)
National Language Act 1963/67, s. 6

For the applicant - Karpal Singh; M/s. Karpal Singh & Co.
For the respondents - Suriyadi bin Halim Omar, Senior Federal Counsel

JUDGMENT

Edgar Joseph Jr J:

This detainee was made the subject of a detention order by the Deputy Minister for Home Affairs acting pursuant to the powers conferred upon him by s. 6(1) of the Dangerous Drugs (Special Preventive Measurers) Act 1985, (the Act). The ground upon which the detention order was made was that he was involved in activities relating to the trafficking of dangerous drugs.

Before me, the point taken by Counsel for the detainee was that there had been non-compliance with the provisions of proviso (c) to s. 3(2) of the Act, the English text of which reads:

> He shall not be detained for more than fourteen days unless a police officer of or above the rank of Deputy Superintendent has reported the circumstances of the arrest and detention to the Inspector-General or to a police officer designated by the Inspector-General in that behalf and the Inspector-General or police officer so designated by him, as the case may be, shall forthwith report the same to the Minister.

In the context of Counsel's submission the particular circumstances of the present case were as follows:

The detainee had been arrested on 6 December 1989, by Inspector Chek U Koi, acting pursuant to the powers conferred upon him by s. 3(1) of the Act, which reads:

> Any police officer may, without warrant, arrest and detain, for the purpose of investigation, any person in respect of whom he has reason to believe there are grounds which could justify his detention under subs. (1) of s. 6.

There was no dispute that there was compliance with the requirements of provisos (a) and (b) to s. 3(2) of the Act which read:

(a) he shall not be detained for more than twenty four hours except with the authority of a police officer of or above the rank of Inspector;

(b) he shall not be detained for more than forty eight hours except with the authority of a police officer of or above the rank of Assistant Superintendent of Police;

So far as proviso (c) to s. 3(2) of the Act was concerned, the material facts were that the designated officer, Senior Assistant Commissioner of Police Osman bin Awal had stated in his affidavit affirmed on 27 March 1991, (En. 7) that he had on 14 December 1989, received a report from Superintendent of Police Haji Khalid bin Hashim stating the circumstances of the arrest and detention of the detainee and that thereafter on 18 December 1989, he had made his own report of the same to the Minister.

It was submitted by Counsel for the detainee that although Superintendent of Police Haji Khalid had reported the circumstances of the arrest and detention to the designated officer eight days after the arrest, and therefore well within the 14 day period limited under proviso (c) to s. 3(2) the Act, the latter did not make his own report to the Minister until four days later, and this unless explained, was too late in the day, because the time limited by the subsection for the doing of this act was "forthwith". It was pointed out that no attempt had been made to explain what Counsel described as an apparent delay although there was an *onus* on the executive to do so.

In support, Counsel cited the Indian Supreme Court decision of *Gopal Mandal v. The State of West Bengal* [1975] AIR SC 1807, a preventive detention case, where the petitioner had challenged his detention under s. 3(1) of the Maintenance of Internal Security Act, on the ground, *inter alia*, that although the District Magistrate was required by law to report the matter of the petitioner's detention to the State Government, forthwith upon the petitioner's arrest, he did not do so until three days later and this was too late. Untwalia J, speaking for the Supreme Court, observed that "the word 'forthwith' has been interpreted to mean 'as soon as possible'; 'without any delay." But then went on to add that if there is an apparent delay which is reasonably explained, then there would be no violation of the mandatory requirements of the law. On the facts, he went on to find that the apparent delay of three days had been satisfactorily explained and the application was accordingly dismissed.

In reply, the Senior Federal Counsel submitted, on behalf of the Minister, that so long as both the report to the designated officer and the latter's report to the Minister were made within the 14 day period limited by proviso (c) to s. 3(2) there was no question of any delay. In any event, he directed attention to the fact that the text of proviso (c) to s. 3(2) of the Act in the National Language was different from that of the English text, because in the former the word "forthwith" was absent and that by reason of s. 6 of the National Language Act 1967, the former was authoritative, as no doubt it is.

Now, if the submission of Counsel for the detainee is correct then, for purposes of proviso (c) to s. 3(2) of the Act, time starts running against the designated officer only upon receipt by him of the report from the officer of or above the rank of Deputy Superintendent of Police as to the circumstances of the arrest and detention of the detainee. So, if the officer of or above the rank of Deputy Superintendent of Police elects to make his report to the designated officer at midnight on the 14th day after the arrest of a detainee, it would be still possible for the designated officer to comply with the requirements of proviso (c) to s. 3(2) of the Act provided he acts within a reasonable time thereafter. (See s. 54 Interpretation Act 1967).

With respect, this cannot be right for once the 14 day period of detention based upon the authority of a police officer of or above the rank of Deputy Superintendent of Police expires, without there having been compliance with the second limb of proviso (c) to s. 3(2) of the Act, the detainee's continued detention thereafter would be illegal and so no report made by the designated officer, however soon after the expiry of the 14 day period of detention, could cure the illegality.

In my view, so long as the two reports within the meaning of proviso (c) to s. 3(2) of the Act are made within the 14 day period of the detainee's detention, there is sufficient legal backing, for the detainee's continued detention pending enquiries for a maximum permissible period of up to 60 days from the date of his arrest but no more. (See s. 3(2)). In the present case, there was no dispute that the detention order under s. 6(1) of the Act was duly made.

The result therefore is that this application must be, and is, dismissed.

Also found at [1991] 2 CLJ 1378